

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

ERIC E.,

Plaintiff,

v.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant.

Civil No. 2:21cv398

FINAL ORDER

Plaintiff Eric E. (“Plaintiff”) brought this action under 42 U.S.C. § 405(g) seeking judicial review of the final decision of the Social Security Commissioner (“Commissioner”) denying his claim for disability insurance benefits under the Social Security Act. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia, and by order of reference dated November 9, 2021 (ECF No. 16), this matter was referred to United States Magistrate Judge Douglas E. Miller for a Report and Recommendation (“R&R”). Judge Miller issued his R&R on March 11, 2022 (ECF No. 23), recommending that the Court grant the Commissioner’s Motion for Summary Judgment and affirm the Commissioner’s finding of no disability. Plaintiff filed timely objections (ECF No. 24), and the Commissioner responded (ECF No. 25).

A district judge must make a *de novo* determination as to any portion of the

R&R to which timely objection has been made. 28 U.S.C. § 636(b)(1)(B)–(C); Fed. R. Civ. P. 72(b). Here, Plaintiff's objects that judicial review is impossible due to the ALJ's failure to properly explain his decision; that the R&R improperly failed to assign sufficient weight to the opinion of treating source Dr. Wardell; that the R&R erred by accepting the ALJ's erroneous RFC function-by-function analysis; and that the R&R erred by upholding the ALJ's credibility determinations, particularly with regard to Plaintiff himself. The Commissioner responds that Plaintiff's objections merely rehash his summary judgment arguments that were sufficiently addressed in the R&R; that the ALJ sufficiently explained his rationale; that Dr. Wardell's statements do not constitute an opinion under the new regulations; that the ALJ's RFC assessment was supported by substantial evidence; and that the ALJ's analysis of Plaintiff's subjective statements was supported by substantial evidence.

Having reviewed the record and examined the objections filed by Plaintiff to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, the Court finds no error with Judge Miller's proposed disposition. Accordingly, the Court hereby **ADOPTS AND APPROVES** in full the findings and recommendations set forth in the Report and Recommendation: Plaintiff's Motion for Summary Judgment (ECF No. 18) is **DENIED**, the Commissioner's Motion for Summary Judgment (ECF No. 20) is **GRANTED**, the decision of the Commissioner is **AFFIRMED**, and this matter is **DISMISSED WITH PREJUDICE**.

The parties are **ADVISED** that an appeal from this Final Order may be commenced by forwarding a written notice of appeal to the Clerk of the United States

District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. This written notice must be received by the Clerk within sixty days from the date of this Final Order.

The Clerk is **REQUESTED** to mail a copy of this Order to all parties.

IT IS SO ORDERED.

/s/

Arenda L. Wright Allen
United States District Judge

September 12, 2022
Norfolk, Virginia